LAW OFFICE OF
C. RAUCH WISE
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C. Rauch Wise

Telephone
(864) 229-5010
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(864) 229-2665

January 9, 2018

Daniel E. Shearouse, Clerk
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

Re: Tito Harris, SCDC #345287 vs. State of South Carolina, Case No. 2014-CP-08-1727

Dear Mr. Shearouse:

I am enclosing herewith for filing the original Notice of Appeal together with the original Affidavit of Service regarding the above matter. Your help is greatly appreciated.

With kindest regards, I am

Very truly yours,

C. Rauch Wise

CRW/slt
Enclosure

cc SC Court Administration
Megan Harrigan Jameson
Hon. William Seals, Jr.
Clerk, Berkeley County

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
JAN 12 2018
S.C. SUPREME COURT

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

William H. Seals, Jr. , Circuit Court Judge

Case № 2014-CP-08-1727

Tito Harris, # 345287, ... Applicant,

vs.

State of South Carolina, ... Respondent.

NOTICE OF INTENT TO APPEAL

Notice is hereby given that Tito Harris appeals the ruling of the Hon. William H. Seals, Jr. dated October 25, 2017, and his denial by Order filed on December 28, 2017 of a timely filed Motion to alter or Amend Judgment. Appellant received a copy of this Order on December 28, 2017.

January 9th, 2018

C. Rauch Wise
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010

Attorney for Applicant

OTHER COUNSEL OF RECORD

Megan Harrigan Jameson
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

William H. Seals, Jr. , Circuit Court Judge

Case № 2014-CP-08-1727

Tito Harris, # 345287, ... Applicant,

vs.

State of South Carolina, ... Respondent.

AFFIDAVIT OF SERVICE

PERSONALLY appeared before me Sandy Traynham who, after being duly sworn, deposes and says that she is the legal assistant for C. Rauch Wise, Attorney for the Applicant in the above entitled case. That on January 9, 2018, she did deposit in the United States Mail with proper postage affixed thereto a copy of the Notice of Appeal in the above case addressed to Megan Harrigan Jameson, Office of the Attorney General, P.O. Box 11549, Columbia, South Carolina 29211.

Sandy Traynham

SWORN to and Subscribed
before me this 9th day
of JANUARY, 2017.

(L.S.)
Notary Public for South Carolina
My Commission expires: 12/7/2019

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) NINTH JUDICIAL CIRCUIT
)
) CASE NO: 2014-CP-08-1727
TITO HARRIS, #345287)
Plaintiff,) **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**
vs.)
)
STATE OF SOUTH CAROLINA)
Defendant.)

FILED
2017 OCT 31 PM 2:29
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY S.C.

Plaintiff's Attorney:	Defendant's Attorney:
Clarence Rauch Wise, Bar No.	Megan Harrigan Jameson, Bar No.
Address:	Address: South Carolina Attorney General's Office
305 Main St.	PO Box 11549
Greenwood, SC 29646	Columbia, SC 29211
Phone: ____ Fax ____	Phone: ____ Fax____
E-mail: ____ Other: ____	E-mail: ____ Other: ____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: ____
Estimated Time Needed: ____ Court Reporter Needed: ☐ YES/☒ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Megan Harrigan Jameson
Signature of Attorney for ☐ Plaintiff /☒ Defendant

October 23, 2017
Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $____

EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: ____
☐ Other: ____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: ____

JUDGE CODE ____
Date: ____

CLERK'S VERIFICATION

Collected by: ____ Date Filed: ____
☐ MOTION FEE COLLECTED: $ ____
☐ CONTESTED – AMOUNT DUE: $ ____

SCCA 233 (11/2003)

NC

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Tito Harris, SCDC # 345287, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2014-CP-08-1727 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief filed July 29, 2014, by Tito Harris (Applicant) alleging four grounds of ineffective assistance of counsel. Respondent made its Return on September 4, 2015, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened January 13, 2017, at the Berkeley County Courthouse. Applicant was present at the hearing and represented by C. Rauch Wise, Esquire. Assistant Attorney General Alicia Olive from the South Carolina Attorney General's Office appeared on behalf of the State. Following the evidentiary hearing, this Court denied the application. This order follows.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. During its February 2010 term, the Berkeley County Grand Jury indicted Applicant for murder (2010-GS-08-0091) for the shooting death of his estranged wife after confronting her about an alleged affair with his uncle. Guy Vietta, Esquire, represented him. Deputy Solicitor Bryan Alfaro and Assistant Solicitor Anne Williams prosecuted the case.

On March 14, 2011, Applicant proceeded to a jury trial in the Berkeley County Court of General Sessions before the Honorable Deadra L. Jefferson, circuit court judge. At the conclusion of the trial, the jury convicted Applicant as indicted. On March 17, 2011, the trial court sentenced Applicant to life imprisonment.

Applicant filed a timely notice of appeal and was represented by Chief Appellate Defender Robert M. Dudek, of the South Carolina Commission on Indigent Defense—Office of Appellate Defense, who submitted appeal perfected on the Applicant's behalf pursuant to Anders[1]. The South Carolina Court of Appeals dismissed the Applicant's appeal and granted Counsel's petition to be relieved. State v. Harris, Op. No. 2013-UP-477 (S.C. Ct. App. filed December 18, 2013). The Remittitur was issued on January 8, 2014.

ALLEGATIONS RAISED

In his application, Applicant alleged he is being held in custody unlawfully based on allegations of:

1. "Trial counsel failed to object to the charge that a jury may infer malice from the use of a deadly weapon"
    a. "At the time of my trial, State v. Belcher[2] had been the law for almost 19 months. Trial counsel should have raised an objection to the charge that permitted the jury to infer malice from the use of a deadly weapon"
2. "Trial counsel failed to present evidence that would mitigate this offence from murder to manslaughter"
    a. "The sole defense was the fact that the case should have been manslaughter and not murder. Trial counsel failed to investigate and call witnesses who would verify that my wife was having an affair with my uncle"
3. "Trial counsel failed to object to the charge by the trial judge which said "the words must be accompanied by some overt, threatening act which would have produced the heat of passion"
    a. "Trial counsel should have objected to the charge that equated

[1] Anders v. California, 386 U.S. 738 (1967).
[2] State v. Belcher, 385 S.C. 597, 685 S.E.2d, 802 (2009).

manslaughter with self-defense. While words along [sic] may not be sufficient to cause one to act in self-defense, words alone may lessen a murder charge to manslaughter"

4. "Trial counsel failed to object to the charge by the trial judge that stated "The provocation needed for voluntary manslaughter must come from some act of or related to the victim. Words alone, however vulgar or insulating, are not enough to meet legal provocation"
    a. "Trial counsel should have objected to the charge that again improperly informed the jury that words alone would not reduce a murder charge to a manslaughter charge. Again the requirement of an act to lessen murder to manslaughter is not a proper statement of the law"

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant presented testimony from trial counsel Guy Vitetta. He testified this case had "difficult facts" and he was "hoping to find some mitigation evidence that would at least allow [him] to get a charge of voluntary manslaughter." (PCR Tr. 4, 16). He elaborated the State alleged Applicant had driven all night from North Carolina to arrive at the victim's house and shot her in the head in the presence of one of their children. (PCR Tr. 8-10). He testified Applicant and the victim were separated at the time, were not living together, were contemplating a divorce, and had consulted with him about a divorce. (PCR Tr. 8-9). He testified Applicant was "having a difficult time with the separation" and had tried to contact the victim that evening. (PCR Tr. 9). He testified Applicant had called the victim repeatedly the evening and early morning of the incident, including twenty-four times within half-an-hour. (PCR Tr. 11-12). Counsel elaborated he though a conviction for voluntary manslaughter was the best possible outcome based on the facts and he was hoping to avoid a life sentence for Applicant. (PCR Tr. 4, 12, 14). Counsel testified he attempted to negotiate for a voluntary manslaughter plea agreement and met with the solicitor multiple times, but the State refused to make an offer to voluntary manslaughter. (PCR Tr. 14, 16). He testified his trial strategy to get a voluntary manslaughter

conviction in lieu of a murder conviction was based on Applicant's recent discovery of a purported extramarital affair between the victim and his uncle. (PCR Tr. 12-13). He testified the trial court initially did not want to give a jury instruction on voluntary manslaughter, but eventually acquiesced and agreed there was some evidence of legal provocation. (PCR Tr. 13). He testified the evidence of the sudden heat or passion or provocation was from when Applicant discovered his uncle's name in his wife's phone and learned they had spent the weekend together. (PCR Tr. 16-17).

Counsel testified Applicant gave two videotaped confessions; the first was when he was stopped down the street from the scene and the second was at the police station. (PCR Tr. 9-10). He testified he challenged both of these statements during a pre-trial hearing. (PCR Tr. 10). Counsel testified that the victim's son who witnessed the shooting testified at trial, as did the victim's other son who was hiding but heard the altercation. (PCR Tr. 10-11). He testified Applicant appeared calm and cooperative in the videos. (PCR Tr. 14). He testified attempted to call witnesses on Applicant's behalf to establish an affair between Applicant's wife and his uncle but was unable to get any of them to testify at trial because he either could not get ahold of the witnesses or they were unwilling to help. (PCR Tr. 15-16).

Counsel testified the trial court gave a jury instruction on the inference of malice from the use of a deadly weapon and he did not object. (PCR Tr. 5). He testified he was unaware of State v. Belcher, 385 S.C. 597, 685 S.E.2d, 802 (2009), at the time of Applicant's trial, although Belcher was decided over a year before Applicant's trial. (PCR Tr. 5-6). Counsel also testified he did not object to a portion of the voluntary manslaughter charge that words accompanied by an overt action are necessary for sufficient legal provocation. (PCR Tr. 6, 14). He testified he had

not done any research on whether that charge was more appropriate in an imperfect self-defense case. (PCR Tr. 6). He testified there was no allegation that the victim, Applicant's wife, had made any sort of threatening motions towards Applicant. (PCR Tr. 6). Counsel acknowledged the State's theory of the case was the argument was over his wife's alleged affair and the gun used to kill decedent was found in a closet. (PCR Tr. 7).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearings. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review of the entire record, including the testimony presented at the evidentiary hearing, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action in regards to his allegations of ineffective assistance of counsel. Below are the findings in regards to each specific allegation of ineffective assistance of counsel raised by Applicant.

Allegation: Trial counsel failed to object to the charge that a jury may infer malice from the use of a deadly weapon

Applicant asserts trial counsel was ineffective for failing to object to the trial court's instruction that the jury could infer malice from the use of a deadly weapon in violation of State v. Belcher, 385 S.C. 597, 685 S.E.2d, 802 (2009). During Applicant's trial, the trial court gave the following jury instruction:

> Malice may be inferred from conduct showing a total disregard for human life. Inferred malice may also arise when a deed is done with a deadly weapon.
>
> A deadly weapon is any article, instrument or substance which is likely to cause death or great bodily harm. Whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case. The following, ladies and gentlemen, are examples of instruments which may be deadly weapons: a

> pistol, a shotgun, a rifle, a dirk, a dagger, a knife, a slingshot, metal knuckles, a razor, gasoline, a fire bomb or Molotov cocktail and lighter fluid. A gun may be a deadly weapon even if it is not operating. These are simply evidentiary facts to be considered by you .along with the other evidence in the case, and it is for you, the jury, to give the effect, value and weight you decide it should have.

(Trial Tr. 426). Trial counsel did not object to this jury instruction. At the evidentiary hearing, counsel acknowledged he was unaware of the Belcher decision at the time of Applicant's trial and did not object to the trial court's inference of malice jury instruction.

Approximately a year-and-a-half before Applicant's trial, the South Carolina Supreme Court revisited the issue of whether a trial judge should instruct the jury on inferring malice from the use of a deadly weapon in State v. Belcher, 385 S.C. 597, 600, 685 S.E.2d 802, 803 (2009). In Belcher, conflicting evidence was presented during Belcher's trial regarding the circumstances under which Belcher shot and killed the victim. Id. at 601, 685 S.E.2d at 804. One view of the evidence suggested Belcher shot the victim without justification or excuse while another view of the evidence suggested Belcher shot the victim only after the victim confronted him with a gun without provocation. Id. The trial judge instructed the jury on inferring malice from the use of a deadly weapon over Belcher's objection, and Belcher was convicted of murder. Id. On appeal, Belcher contended the trial judge erred in instructing the jury on the inference of malice in light of the fact the jury was also instructed on the law of self-defense. Id. This Court ultimately agreed, instructing:

> [W]here evidence is presented that would reduce, mitigate, excuse or justify a homicide (or assault and battery with intent to kill) caused by the use of a deadly weapon, juries shall not be charged that malice may be inferred from the use of a deadly weapon. The permissive inference charge concerning the use of a deadly weapon remains a correct statement of the law where the only issue presented to the jury is whether the defendant has committed murder (or assault and battery with intent to kill).

Id. at 612, 685 S.E.2d at 810. Additionally, the Supreme Court noted any error in the giving of the inference of malice charge could be harmless where overwhelming evidence of malice was presented apart from the use of a deadly weapon. Id. at 611, 685 S.E.2d at 809.

Thereafter, in State v. Price, 400 S.C. 110, 732 S.E.2d 652 (Ct App 2012), the South Carolina Court of Appeals was presented with an opportunity to analyze whether the trial court erred in instructing the jury on inferred malice from the use of a deadly weapon following Belcher. Price was indicted for assault and battery with intent to kill (ABWIK) following the intentional shooting of the victim in the neck a close range that left the victim paralyzed. Price, 400 S.C. at 111-12, 732 S.E.2d at 652-53. During its charge, the trial court instructed the jury "that malice was an element of ABWIK and that 'malice may be inferred from the conduct of a person if that conduct shows a total disregard for human life. Inferred malice may arise when the deed is done with a deadly weapon.' " Id., 400 S.C. at 112, 732 S.E.2d at 653. The trial court also instructed the jury on the lesser-included offense of assault and battery of a high and aggravated nature. Id.. Price was convicted of ABWIK as indicted. Id. On appeal, Price argued the trial court erred in instructing the jury on the jury it could infer malice from the use of a deadly weapon in violation of Belcher. Id. The Court of Appeals affirmed Price's conviction, finding the trial court committed no reversible error in charging the jury on inferring malice from the use of a deadly weapon because there was no evidence presented during trial that would have reduced, mitigated, excused, or justified the assault and battery committed by Price. Id., 400 S.C. at 114-15, 732 S.E.2d at 653-54.

In the present case, this Court finds Applicant's case is analogous to Price and that the inference of malice from the use of a deadly weapon jury instruction was proper based on the facts presented at trial. Viewing the evidence presented during Applicant trial, the relevant facts surrounding the shooting establish Applicant drove for hours and across state lines after while repeatedly calling his estranged wife and shot her in the head in the view of her son without the victim doing anything to provoke the shooting. This Court concludes there was no evidence presented during trial that would have reduced, mitigated, excused, or justified the shooting death of victim. Moreover, this Court also concludes any purported error in giving the inference of malice charge would be harmless based on the overwhelming evidence of malice presented. Therefore, this Court concludes Applicant has not and cannot establish any prejudice because there is no reasonable probability the result of Applicant's trial would have been different had counsel objected to the inference of malice charge as instructed by the trial court. This allegation is denied and dismissed with prejudice.

Allegation: Trial counsel failed to present evidence that would mitigate this offence from murder to manslaughter

Applicant asserts trial counsel was ineffective for failing to present evidence or call witnesses who would verify that the decedent was having an affair with his uncle in an effort to establish he should be convicted of voluntary manslaughter, not murder. Counsel testified he attempted to contact multiple friends and family members of Applicant to establish an affair between Applicant's wife and his uncle but was unable to get any of them to testify at trial because he either could not get a hold of the witnesses or they were unwilling to help. Applicant presented no such evidence or witnesses at his evidentiary hearing.

This Court finds Applicant has failed to meet his requisite burden of proof as to this allegation. Initially, Applicant failed to present any witnesses or otherwise offer evidence of what their testimony would be. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) ("This Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial."); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995) (where witnesses applicant claimed could have provided an alibi defense did not testify at the PCR hearing, he could not establish any prejudice from counsel's failure to contact these witnesses); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992) (finding where applicant did not offer witnesses at PCR hearing but merely alleged they would have provided him with alibi defense and testified victims had recanted their trial testimony, he failed to establish prejudice); see also Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (noting applicant failed to establish prejudice from counsel's failure to investigate criminal backgrounds of victims and witnesses where he failed to substantiate at PCR hearing that victims and witnesses had criminal records). Additionally, this Court finds counsel made reasonable attempts to contact potential witnesses and was either unsuccessful or the potential witnesses refused to cooperate. This Court finds Applicant has failed to meet his requisite burden of proof and this allegation is denied and dismissed with prejudice.

Allegation: counsel failed to object to the charge by the trial judge which said "the words must be accompanied by some overt, threatening act which would have produced the heat of passion"

Applicant asserts trial counsel was ineffective for failing to object to the trial court's instruction stating "the words must be accompanied by some overt, threatening act which would

have produced the heat of passion." (Trial p. 428). Applicant argues trial counsel should have objected to the charge that equated manslaughter with self-defense. This allegation is without merit, as this was a proper jury instruction. Where death is caused by use of deadly weapon, words alone, however opprobrious, are not sufficient to constitute legal provocation for purposes of voluntary manslaughter. State v. Byrd, 323 S.C. 319, 322, 474 S.E.2d 430, 432 (1996); State v. Lowry, 315 S.C. 396, 399, 434 S.E.2d 272, 274 (1993). See also Allen v. United States, 164 U.S. 492, 497 (1896) ("There is no error in this instruction. It is well settled by the authorities that mere words, however aggravating, are not sufficient to reduce the crime from murder to manslaughter.")

Allegation: counsel failed to object to the charge by the trial judge which said "the words must be accompanied by some overt, threatening act which would have produced the heat of passion" and "The provocation needed for voluntary manslaughter must come from some act of or related to the victim. Words alone, however vulgar or insulating, are not enough to meet legal provocation"

Applicant asserts trial counsel was ineffective for failing to object to the trial court's instruction stating "the words must be accompanied by some overt, threatening act which would have produced the heat of passion" and "[t]he provocation needed for voluntary manslaughter must come from some act of or related to the victim. Words alone, however vulgar or insulating, are not enough to meet legal provocation." (Trial p. 428). Applicant argues trial counsel should have objected to the charge that equated manslaughter with self-defense. This allegation is without merit, as this was a proper jury instruction. Where death is caused by use of deadly weapon, words alone, however opprobrious, are not sufficient to constitute legal provocation for purposes of voluntary manslaughter. State v. Byrd, 323 S.C. 319, 322, 474 S.E.2d 430, 432 (1996); State v. Lowry, 315 S.C. 396, 399, 434 S.E.2d 272, 274 (1993). See also Allen v. United

States, 164 U.S. 492, 497 (1896) ("There is no error in this instruction. It is well settled by the authorities that mere words, however aggravating, are not sufficient to reduce the crime from murder to manslaughter.") Because these were proper statements of law, trial counsel was not ineffective for failing to object. This allegation is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for is denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief must be denied and dismissed with prejudice; and
2. Applicant Tito Harris shall remain in the custody of the State.

AND IT IS SO ORDERED this 25 day of Oct, 2017.

WILLIAM H. SEALS, JR.
Presiding Judge
Ninth Judicial Circuit

_____, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY
IN THE COURT OF COMMON PLEAS

TITO HARRIS, #345287 Applicant,

v.

STATE OF SOUTH CAROLINA, Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

C. Rauch Wise, Esquire
305 Main St.
Greenwood, SC 29646

This 13th day of November, 2017.

Jennifer Jennison
Legal Assistant for Respondent

SWORN to before me this 13th day of November, 2017.

Notary Public for South Carolina.
My Commission Expires: 5/14/2024

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) NINTH JUDICIAL CIRCUIT
)
) CASE NO: **2014-CP-08-1727**
TITO HARRIS, #345287)
Plaintiff,) **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**
vs.)
)
STATE OF SOUTH CAROLINA)
Defendant.)

FILED
17 DEC 28 AM 9:12
MARY E. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

Plaintiff's Attorney:	Defendant's Attorney:
Clarence Rauch Wise, Bar No.	Megan Harrigan Jameson, Bar No.
Address:	Address: South Carolina Attorney General's Office
305 Main St.	PO Box 11549
Greenwood, SC 29646	Columbia, SC 29211
Phone: ____ Fax ____	Phone: ____ Fax ____
E-mail: ____ Other: ____	E-mail: ____ Other: ____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: ____
Estimated Time Needed: ____ Court Reporter Needed: ☐ YES/☒ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Megan Harrigan Jameson
Signature of Attorney for ☐ Plaintiff /☒ Defendant — December 12, 2017 Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $ ____

EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: ____
☐ Other: ____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE CODE ____
☐ Other:	Date: ____

CLERK'S VERIFICATION

Collected by: ____ Date Filed: ____
☐ MOTION FEE COLLECTED: $ ____
☐ CONTESTED – AMOUNT DUE: $ ____

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Tito Harris, SCDC # 345287, Applicant, v. State of South Carolina, Respondent.	Case No.: 2014-CP-08-1727 **ORDER DENYING APPLICANT'S MOTION TO ALTER OR AMEND JUDGMENT**

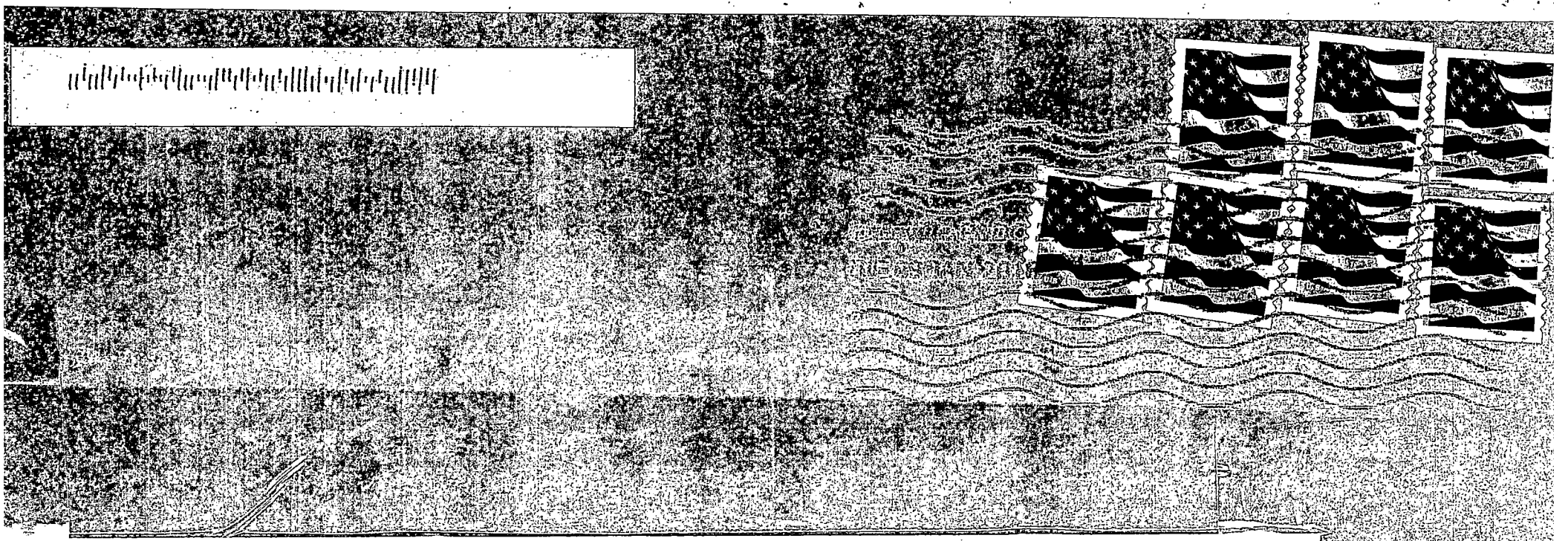
This matter comes before the Court by way of Applicant's "Rule 59 Motion to Alter or Amend Judgement." The Respondent made its Return to this motion requesting it be denied and dismissed.

This Court's Order of Dismissal denying and dismissing Applicant's post-conviction relief application was filed on October 31, 2017. Based upon careful reconsideration of all the evidence in this case and upon full consideration of Applicant's motion and Respondent's return, this Court is not persuaded to alter or amend the judgment. This Court further finds that oral argument would not aid in the reconsideration of the original judgment. Therefore, this Court finds that the original Order of Dismissal shall stand as it was written.

AND IT IS SO ORDERED this 15 day of December, 2017.

William H. Seals, Jr.
Presiding Judge
Ninth Judicial Circuit

Moncks Corner, South Carolina



LAW OFFICE OF
C. RAUCH WISE
Attorney & Counselor at Law
305 Main Street
Greenwood, SC 29646

Daniel E. Shearouse, Clerk
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211